



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**MAY - 2 2017**

OFFICE OF WATER

The Honorable John Barrasso  
Chairman  
Committee on Environment and Public Works  
U.S. Senate  
Washington, DC 20510

Dear Chairman Barrasso and Members of the Committee:

I am writing today to make you aware of the Environmental Protection Agency's (EPA's) views regarding S. 692, the "Water Infrastructure Flexibility Act," a bill which was recently reported to the Senate for general consideration by the Committee on Environment and Public Works.

The U.S. Environmental Protection Agency supports the goals of S. 692 which incorporates many policies the agency is currently implementing.

In the past, the EPA, states, and municipalities have focused on each CWA requirement individually, without full consideration of all CWA requirements or how various water quality investments can be coordinated and managed as a consolidated effort. This approach may have had the unintended consequence of constraining a municipality from addressing its most serious water quality issues first. Integrated Planning offers municipalities an opportunity to meet CWA requirements in a way that allows the highest priority wastewater and stormwater projects to come first, and the EPA encourages communities to evaluate and incorporate sustainable and community first solutions, such as green infrastructure, into these efforts.

S. 692, by encouraging integrated planning and promoting green infrastructure, would help advance the goal of identifying cost-effective and protective solutions to successfully improve water quality. As we move forward with the Integrated Planning approach, we look forward to working with the Senate Committee on Environment and Public Works, our state colleagues, municipalities, and the many other partners, stakeholders, and citizens to implement it. The EPA remains committed to improvements in wastewater and stormwater management and moving toward full attainment of water quality and human health goals.

On behalf of the Administration, I would like to take this opportunity to comment on specific provisions of S. 692, and, in some cases, to recommend revisions that would strengthen the bill and provide greater clarity and alignment with the goals and objectives of the Clean Water Act. We hope that you will take these suggestions, set forth in the enclosure, into consideration when the Senate takes up this bill.

The Office of Management and Budget advises us that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael H. Shapiro". The signature is fluid and cursive, with the first name "Michael" being more prominent.

Michael H. Shapiro  
Acting Assistant Administrator

Enclosure

**SPECIFIC COMMENTS ON**  
**S. 692, THE "WATER INFRASTRUCTURE FLEXIBILITY ACT"**

**SEC. 5. FINANCIAL CAPABILITY GUIDANCE.**

In 2016, Senate Report 114–70, which accompanied the 2016 Consolidated Appropriations Act, directed EPA to contract with the National Academy of Public Administrators (NAPA) to conduct an independent study to create a definition and framework for "community affordability" and determine how different localities can effectively fund municipal projects. NAPA will issue a report with findings and recommendations by September 19, 2017. EPA will use the NAPA report to identify potential modifications to EPA's 1997 Financial Capability Assessment (FCA) guidance.

**Comment 1:** Section 5(c)(1) requires EPA to revise existing FCA guidance within one year of completion of NAPA study to establish a definition and framework for community affordability.

- The EPA recommends adding additional time to consult with stakeholders and request public comment on revisions to the FCA guidance, strengthening the final document.

**Comment 2:** The considerations listed in Section (d)(1) provide a wide range of factors to consider when evaluating the financial capability of a community.

- This section could be clarified and strengthened by deferring instead to the considerations that are recommended by the in-depth study referred to in Section 5(c) (NAPA Study).

**Comment 3:** The "transition rule" section of Section 402(s)(5)(B) may lower the standards that apply to dischargers as required by CWA.

- The EPA recommends clarifying Section 402(s)(5)(B) to not inadvertently modify CWA objectives. The EPA believes the language could be easily clarified. One suggestion that would clarify the language is as follows: "(B) TRANSITION RULE.—In any case in which a discharge is subject to a judicial order or consent decree as of the date of enactment of the [this act] resolving an enforcement action under this Act, any schedule of compliance issued pursuant to an authorization in a State water quality standard shall not be less stringent than the ~~revise or otherwise affect~~ a schedule of compliance in that order or decree unless the order or decree is modified by agreement of the parties and the court."

